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20-6069

NO._____

IN THE
SUPREME COURT OF THE UNITED STATES

Jeff Howell, Petitioner

vs.

State of Indiana, Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE INDIANA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Jeff Howell
P.O. Box 6093
Bloomington IN 47407-6093
Petitioner, *pro se*

QUESTIONS PRESENTED

1. Whether the lower courts erred by denying Howell's right to access of information on jurors who deliberated at his trial
2. Whether the lower courts abused their discretion by denying Howell's right to access of information on jurors who deliberated at his trial
3. Whether Indiana Statute 33-28-5-22, Indiana Administrative Rule 9 and 10 allow parties to an action to have access to information on jurors who deliberated at his trial, and whether the requesting party is required to state a specific reason for the request

PARTIES TO THE PROCEEDING

Petitioner is Jeff Howell, a resident of the United States. Respondent is the State of Indiana.

DIRECTLY RELATED PROCEEDINGS

1. *Jeff Howell v. State of Indiana*, 19A-CR-02913 (Ind. 2020). Indiana Supreme Court's denial of Howell's petition to transfer. Not published.
2. *Jeff Howell v. State of Indiana*, 19-CR-02913 (Ind. Ct. App. 2020). Opinion of the Indiana Court of Appeals affirming lower court's denial of Howell's motion. Not published.
3. *State of Indiana v. Jeff Howell*, 49G03-0807-PC-158636 (Marion Superior Court 2008). Not published.

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	ii
DIRECTLY RELATED PROCEEDINGS	ii
TABLE OF CONTENTS.....	iii
APPENDIX – CONTENTS.....	iv
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
STATEMENT OF JURISDICTION	1
STATUTORY AND CONSTITUTIONAL AUTHORITY.....	1
STATEMENT OF THE CASE.....	4
REASONS FOR GRANTING THE PETITION.....	13
CONCLUSION.....	13

APPENDIX - CONTENTS

<i>Jeff Howell v. State of Indiana,</i> 19A-CR-02913 (Ind. 2020). Indiana Supreme Court's denial of Howell's Petition to Transfer	1A
<i>Jeff Howell v. State of Indiana,</i> 19-CR-02913 (Ind. Ct. App. 2020). Indiana Court of Appeal's dismissal of Howell's appeal.....	3A
<i>State of Indiana v. Jeff Howell</i> , 49G03-0807-PC- 158636 (Marion Superior Court 2008). Howell's Motion for Release of Juror Information (denied)	5A
<i>State of Indiana v. Jeff Howell</i> , 49G03-0807-PC- 158636 (Marion Superior Court 2008). Howell's letter to the Marion County Clerk requesting information on the jurors who presided at his trial (denied).	15A

TABLE OF AUTHORITIES

<i>In Re Access to Juror Questionnaires; the Washington Post</i> (D.C. Circuit Court of Appeals, (2012).....	4
<i>U.S. v. Barnes</i> , 604 F.2d 121 (1979).....	4
<i>Globe Newspaper Co. v. Superior Court</i> , 457 U.S. 596 (1982).....	5
<i>Richmond Newspapers, Inc. v. Virginia</i> , 448 U.S. 55 (1980).....	5, 8
<i>Press-Enterprise Co. v. Superior Court</i> , 478 U.S. 1 (1986).....	5,6,7,11,12
<i>United States v. A.D.</i> , 28 F.3d 1353 (3 rd Cir. 1994).....	5
<i>Westmoreland v. CBS, Inc.</i> , 752 F.2d 16 (2d Cir. 1984)	5
<i>Publicker Industries, Inc. v. Cohen</i> , 733 F.2d 1059 (3 rd Cir. 1984).....	5
<i>In re Continental Illinois Sec. Litig.</i> , 732 F.2d 1310 (7 th Cir. 1984)	5
<i>Brown & Williamson Tobacco Co., Corp. v. FTC</i> , 710 F.2d 1165 (6 th Cir. 1983)	5
<i>In re Baltimore Sun Co.</i> , 841 F.2d 74, 75 (4 th Cir. 1988).....	7

<i>Gannett Co. v. State</i> , 751 A.2d 735, 757 (Del. 1990).....	8
<i>United States v. Burr</i> , 25 F. Cas 55, 87, No. 14,693 (C.C.D. Va. 1807)	7, 8
<i>In re Globe Newspaper Co.</i> , 920 F.2d 88 (1 st Cir. 1990)	9
<i>United States v. Doherty</i> , 675 F. Supp. 719, 723 (D. Mass. 1987).....	10
<i>United States v. Posner</i> , 744 F. Supp. 855, 886, n.2 (S.D. Fla. 1986)	10
<i>United States v. Wecht</i> , 537 F.2d 222 (3 rd Cir. 2008).....	11
<i>State ex rel. Beacon Journal Publishing Co. v. Bond</i> , 98 Ohio St.3d 146, 2002-Ohio-7117.....	11, 12

Constitutional Provisions

U.S. Const. Amend. I.....	1,4,5,6,11,12
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Other Citations

David Weinstein, Protecting a Juror's Right to Privacy: Constitutional Constraints and Policy Opinions, 70 Temp. L. Rev. 1,30 (1997) 8

Inside the Jury Room at the Washington Post Libel Trail, Am. Law., Nov. 1982 10

Did Civic Duty Go Away?, Jeff Blumenthal, Legal Intelligencer, Sept. 15, 1999 11

OPINIONS BELOW

Jeff Howell v. State of Indiana, 19A-CR-02913 (Ind. 2020). Indiana Supreme Court denial of Howell's petition to transfer. Not published.

Jeff Howell v. State of Indiana, 19-CR-02913 (Ind. Ct. App. 2020). Opinion of the Indiana Court of Appeals affirming lower court's denial of Howell's motion. Not published.

State of Indiana v. Jeff Howell, 49G03-0807-PC-158636 (Marion Superior Court 2008). Howell's letter to the Marion County Clerk requesting information on jurors who presided at his trial. Denied.

STATEMENT OF JURISDICTION

This Court's jurisdiction is drawn from 28 U.S.C. § 1257(a).

STATUTORY AND CONSTITUTIONAL AUTHORITY

Both the First Amendment as well as Indiana Statutes and Administrative Rules demand that court information be made available to the public as well as to parties in a particular action.

Indiana Code 33-28-5-22, Indiana Administrative Rule 9, and Indiana Jury Rule 10, all provide that a party to an action is entitled to information about the jurors who were involved in the case.

“After the period of service for which names were drawn from the master jury list has expired, and all persons selected to serve as jurors have been discharged, all records and papers compiled and maintained by the jury administrator or the clerk must be preserved by the clerk of the courts for the period prescribed by rule of the supreme court. The records and papers *must be available for public inspection* at all reasonable times and in accordance with this chapter and applicable supreme court rules.” Emphasis added.

Indiana Code 33-28-5-22.

Although a specific period of time cannot be determined, it is believed that it is safe to say that one cannot deny that “the period of service for which names were drawn from the master jury list” has indeed expired for a trial that occurred in 2009. *Id.*

Next, the statute demands that the “records and papers” *must be available for public inspection*. *Id.*

It should be noted that Indiana Code 33-28-5-22 demands that the information be available to the *public*. This access is even more broad than allowing the information to be available to parties.

“All persons have access to Court Records as provided in this rule, except as provided in section (B)(2) of this rule.”

Ind. Admin. R. 9(B).

“The following persons, in accordance with their functions within the judicial system, may have *greater access* to Court Records:

(d) *the parties to a case or their lawyers with respect to their own case.*

Ind. Admin. R. 9(B)(2)(d). Emphasis added; irrelevant subsections omitted for clarity.

“Personal information relating to a juror or prospective juror not disclosed in open court is confidential, *other than for the use of the parties* and counsel. The court shall maintain that confidentiality to an extent *consistent with the constitutional and statutory rights of the parties.*”

Ind. Jury R. 10.

STATEMENT OF THE CASE

Over the years, courts have repeatedly upheld a First Amendment right of public access to court information, including the personal information of jurors. The Washington Post sought juror questionnaires in the murder trial of Ingmar Guandique, accused of murdering Chandra Levy in 2001. The murder received extensive media coverage because Levy was having an affair with a Congressman. The jury was promised that their answers to the questionnaire would be confidential, but ultimately, the court of appeals held that the questionnaires had to be disclosed to the public except for any questions that the trial judge believed involved “deeply personal matters.” *In Re Access to Juror Questionnaires: The Washington Post*, (D.C. Court of Appeals, 2012).

A court may deny access to all identifying information about jurors when there is a serious threat to the jurors’ welfare. In the 1977 trial of Leroy Barnes, who was charged with violating multiple federal narcotics and firearms laws, a federal district court withheld jurors’ names and addresses after the judge determined that the case presented an unusual risk to the jurors. See *U.S. v. Barnes*, 604 F.2d 121 (1979). Howell was a threat to no one, and there was no victim involved in his case.

The U.S. Supreme Court has recognized that the First Amendment protects the public's right to attend criminal proceedings. *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 55 (1980). The Court has further recognized that the public and the press have a right to attend not only the trial itself, but also those pretrial proceedings that have been traditionally open to the public and whose function would be enhanced by allowing public scrutiny. *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986) [hereinafter *Press-Enterprise II*] (holding that a First Amendment right of access applies to voir dire proceedings). While Howell's case involved an alleged criminal offense, the U.S. Supreme Court has not yet directly addressed whether this constitutional right of access to judicial proceedings applies to civil proceedings or to court documents, numerous federal and state courts have extended the First Amendment right of access to civil proceedings and to court records filed in both criminal and civil cases.

The following cases recognize a First Amendment right of access to civil proceedings: *United States v. A.D.*, F.2d 1353 (3d Cir. 1994); *Westmoreland v. CBS, Inc.*, 752 F.2d 16 (2d Cir. 1984); *Publicker Industries, Inc. v. Cohen*, 733 F.2d 1059 (3d Cir. 1984); *In re Continental Illinois Sec. Litig.*, 732 F.2d 1310 (7th Cir. 1984); *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165 (6th Cir. 1983). Is it not rational that,

if the public has a right of access to civil cases, surely a party would have a right of access o information involving his own case, whether that case is civil or criminal?

A First Amendment right of access to information exists if the information in question passes the twin tests of “experience and logic.” First, is there a long history of access to the information at issue? Second, does public dissemination of the information play a significant role in the functioning and enhancement of the judicial process at issue? Information about the individuals who literally decide the fate of both civil litigants and criminal defendants, including information about where the jurors reside, work, or both, satisfies both tests. *Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501 (1984), and *Press-Enterprise Co. v. Superior Court of California*, 474 U.S. 1 (1986).

The roots of open trials reach back to the days before the Norman Conquest when cases in England were brought before the “moths,” a town meeting kind of body such as the local courts of the hundred of the county court. Attendance was virtually compulsory on the part of the freeman of the community, who represented the “patria,” or the “country,” in rendering judgment. The public aspect thus was “almost a necessary incident” of jury trials, since the presence of a jury...already ensured the presence of a

large part of the public. *Press-Enterprise I*, 464 U.S. at 505.

When the jury system grew up with juries of the vicinage...everybody knew everybody on the jury and we may take judicial notice that this is yet so in many rural communities throughout the country. So, everyone can see and how everyone who is stricken from the venire list or otherwise does not serve. Even in the case before us, the entire voir dire proceeding was in open court. But the anonymity of life in the cities has so changed the complexion of this country that even the press, with its vast and imaginative methods of obtaining information, apparently does not know and cannot easily obtain the names of the jurors and of the venire men and women who did not serve in this case. We think it no more than an application of what has always been the law to require a district court, upon the seating of the jury and alternates, if any to release the names and addresses of those jurors....*In re Baltimore Sun Co.*, 841 F.2d 74, 75 (4th Cir. 1988). Howell's trial took place in a city - Indianapolis - far from where he resided at the time of his case, thus, it was not likely that members of the jury would be known to him. This also tends to question whether or not the jury in his case was a "jury of his peers."

So common was the practice of disclosing the identity of jurors that in the conspiracy trial of Aaron

Burr, the names of the twelve chosen jurors were printed in the reported decision. See *Gannett Co. v. State*, 571 A.2d 735, 757 (Del. 1990) (Walsh, J., dissenting) (citing *United States v. Burr*, 25 F. Cas. 55, 87, No. 14,693 (C.C.D. Va. 1807); see also *David Weinstein, Protecting a Juror's Right to Privacy: Constitutional Constraints and Policy Options*, 70 Temp. L. Rev. 1, 30 (1997)). The juror's names were also made public in the highly publicized trials of William Penn in 1670 and of John Peter Zenger in 1735. *Gannett Co. v. State*, 751 A.2d 735, 756 n.3 (Del. 1990) (Walsh, J., dissenting). Thus, there is a long-established tradition of allowing access to juror's identities in criminal trials in the United States. Again, parties should be granted greater access than the public when the information pertains to the parties' own cases.

In recognizing the public's constitutional right to attend criminal proceedings, the Supreme Court identified the following purposes served by an open judicial system: ensuring that proceedings are conducted fairly; discouraging perjury, misconduct of participants, and biased decisions; providing an outlet for community hostility and emotions; ensuring public confidence in a trial's results through the appearance of fairness; and inspiring confidence in judicial proceedings through education regarding the methods of government and judicial remedies. *Richmond Newspapers*, 448 U.S. at 569.

Many of the purposes listed above which open justice serves are equally served by access to the identities of the jurors. Knowledge of juror identities allows the public to verify the impartiality of key participants in the administration of justice, and thereby ensures fairness, the appearance of fairness, and public confidence in that system. *In re Globe Newspaper Co.*, 920 F.2d 88 (1st Cir. 1990) at 94.

It is possible, for example, that suspicions might arise in a particular trial (or in a series of trials) that jurors were selected from only a narrow social group, or from persons with certain political affiliations, or from persons associated with organized crime groups. It would be more difficult to inquire into such matters, and those suspicions would seem in any event more real to the public, if names and addresses were kept secret. Furthermore, information about jurors, obtained from the jurors themselves or otherwise, serves to educate the public regarding the judicial system and can be important to public debate about its strengths, flaws, and means to improve it....Juror bias or confusion might be uncovered, and jurors' understanding and response to judicial proceedings could be investigated. Public knowledge of juror identities could also deter intentional misrepresentation at voir dire. *Id.*

It is important for the public to receive information about the operation of the administration of justice,

including information about the actual people who do render justice in the truest sense of the word. Access to such information not only serves the cause of justice generally by providing an independent, non-governmental verification of the utter impartiality of the processes involved in selecting jurors and shielding them from improper influences, it also serves to enhance the operation of the jury system itself by educating the public as to their own duties and obligations should they be called for jury service. *United States v. Doherty*, 675 F.Supp. 719, 723 (D. Mass. 1987), aff'd in part, rev'd in part on other grounds, 867 F.2d 47 (1st Cir. 1989).

Several examples from the recent past confirm these views of the essential role that access to information about jurors plays in promoting the public's confidence in the fairness of the judicial process. Access to juror information helped reveal that an African-American juror in Washington, D.C., refused to convict an African-American criminal defendant, regardless of the evidence. Similarly, it was revealed that a law student juror in a civil libel case had erroneously instructed his fellow jurors on the mean of the "actual malice" standard. See Steven Brill, *Inside the Jury Room at The Washington Post Libel Trial*, Am. Law., Nov. 1982, at 1. Furthermore, information obtained as a result of public access to juror identities has even uncovered juror misconduct. *United States v. Posner*, 744 F. Supp. 855, 886 n.2

(S.D. Fla. 1986) (jurors' exposure to prejudicial outside influences revealed in newspaper article featuring interview with juror), aff'd without opinion, 828 F.2d 773 (11th Cir. 1987).

Most recently, news reports revealed that jurors in a civil case switched their votes late Friday afternoon from plaintiff to defendant solely to avoid having to resume deliberations after the weekend. Jeff Blumenthal, *Did Civil Duty Go Awry?*, Legal Intelligencer, Sept. 15, 1999. Not only the names of the jurors, but also the places they live and work may reveal useful background information about the citizens who rendered the verdict in a particular case.

Courts typically stress the nation's long tradition of making the names and addresses of jurors open to the public. In *United States v. Wecht*, the news media challenged a trial court's decision to empanel an anonymous jury in the criminal case against Wecht, a coroner charged with using his public office for private financial gain, the United States Court of Appeals for the Third Circuit noted that it was rare for juror names to be withheld before the upsurge in the use of anonymous juries in the 1970s. *U.S. v. Wecht*, 537 F.3d 222 (3d Cir. 2008).

The Supreme Court of Ohio in *Beacon Journal* also interpreted the Court's holding in *Press-Enterprise I* as requiring the First Amendment right of access to

attach to juror names. According to that court, juror identity is a component of *voir dire*, which the court in *Press-Enterprise I* held a qualified First Amendment right of access attaches to. *Beacon Journal*, 98 Ohio St.3d 146, 2002-Ohio-7117, at 157.

As shown in the preceding paragraphs, there is a firmly established tradition of providing public access to juror identities, including their addresses, and access to that information enhances the functioning of our judicial system. Therefore, under the *Press-Enterprise* test of “experience and logic,” the names and addresses of jurors are subject to the *qualified right of access guaranteed by the First Amendment*. In holding that the entire jury selection process in criminal trials is subject to the First Amendment right of access by the public, the Supreme Court has strongly suggested that any limitation on information ordinarily disclosed at such proceedings must satisfy the “strict scrutiny” test. Accordingly, before denying the public access to information about jurors in judicial proceedings, courts must conduct a case-by-case analysis and determine that withholding the information is necessary to further a compelling government interest, is narrowly tailored to serve that interest, and that no less restrictive means are available to adequately protect that interest.

REASONS FOR GRANTING THE PETITION

Access to court information should be made available to parties to an action when provided for by statute. This matter is of great public interest because the State of Indiana is preventing parties from accessing information about their cases even when statutes and administrative rules provide for that access. Howell has a statutory and constitutional right to the information requested.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,



Jeff Howell, Petitioner, *pro se*
October 2, 2020